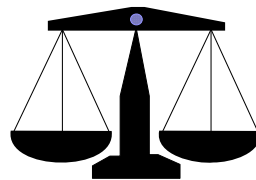


CITY OF CINCINNATI



Fourteenth Status Report to the Independent Monitor

November 12, 2005



Cincinnati Police Department

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I. INTRODUCTION

In April 2001, the Mayor of Cincinnati, and other interested persons within the City, requested the United States Department of Justice (DOJ) to conduct a review of the Cincinnati Police Department's (CPD) policies and procedures, specifically those that related to the uses of force. This request indicated the City's commitment to minimizing the risk of excessive Use of Force in the CPD and to promoting police integrity. In response to these requests, the DOJ launched an investigation pursuant to authority granted under 42 U.S.C. 14141, the Violent Crime Control and Law Enforcement Act of 1994.

The DOJ's investigation, conducted with the full cooperation of the City, included extensive interviews with City and CPD officials, CPD officers, leaders of the Fraternal Order of Police (FOP) and the African-American police officers' association (Sentinels), community members and civil rights organization representatives.

At the close of the investigation, which lasted approximately one year, the DOJ determined that the jurisdictional requirements of 42 U.S.C. 14141 were sufficiently satisfied to permit the Parties to enter into the **Memorandum of Agreement (MOA)**. As a result of the City's and the CPD's high level of voluntary cooperation and willingness to implement meaningful change, the DOJ believed the MOA, rather than contested litigation, represented the best opportunity to address the DOJ's concerns. On April 11, 2002, history was made in the City of Cincinnati. The City of Cincinnati and the United States Department of Justice entered into the landmark Agreement.¹

At the same time, representatives for the City, the Cincinnati Black United Front (CBUF), the American Civil Liberties Union of Ohio (ACLU), and the Fraternal Order of Police (FOP) executed the **Collaborative Agreement (CA)**. Brought about in part by a series of legal actions citing patterns of discrimination by police, this latter Agreement also served as an alternative to court litigation. Under this Agreement, the Federal District Court introduced a process where various stakeholders in the community could examine the broader social conflicts in the City by gathering the views of as many citizens as possible on improving the relationship between police officers and the community. Through the distribution of questionnaires and a series of public meetings involving different segments of the community, the following goals became the cornerstones of the Collaborative Agreement:

¹ Neither the City's entry into this Agreement, nor its decision to implement changes in CPD policies and procedures is an admission by the City, the CPD, or any officer or employee of either, that any of them have engaged in any unconstitutional, illegal, or otherwise improper activities or conduct.

1. Police officers and community members will become proactive partners in community problem solving.
2. Police officers and community members will build relationships of respect, cooperation, and trust within and between the police and the citizens.
3. Police officers and community members will work to improve education, oversight, monitoring, hiring practices, and accountability of the Cincinnati Police Department.
4. Police officers and community members will ensure fair, equitable, and courteous treatment for all by members of the police department.
5. Police officers and community members will create methods to establish the public's understanding of police policies and procedures and to recognize exceptional service provided by members of the police department.

Implementation of both Agreements will not only reform police practice, but will enhance trust, communication, and cooperation between the police and the community. The settlements have fostered a union that has motivated all segments of the community to come together and focus on building the positive and productive relations necessary to maintain a vibrant city core and surrounding metropolitan area. The City of Cincinnati is enthusiastic and committed to this endeavor and has already begun initiatives to involve virtually all City departments in the process.

The two Agreements will be overseen by an Independent Monitor. Consistent with the consensus decision-making process incorporated in the collaborative process, all collaborative partners unanimously selected the independent monitor.

II. GENERAL POLICIES

A. Mental Health Response Team (MHRT)

The MOA's requirements with regard to the MHRT are located in paragraph 10.

Monitor's Previous Assessment

The Monitor finds the CPD to be in compliance with the requirements of MOA paragraph 10, including MHRT policy and training; availability of trained MHRT officers during all shifts; appropriate responses to MHRT calls; and a partnership with mental health professionals making such professionals available to assist the CPD onsite in interactions with mentally ill persons. The Monitor particularly commends the CPD for training additional MHRT officers, to help bolster the work of the current MHRT officers.

As the Monitor has noted in prior quarters, the MHRT program has received very positive appraisals from mental health professionals, community members and members of the CPD.

Status Update

Training

The Police Academy, in partnership with mental health professionals, completed a 40-hour training course in September for 28 new MHRT officers, bringing the total complement of trained officers to 198.

MHRT Availability

To ensure the availability of MHRT officers 24/7 and city-wide, the CPD continues to track the number of MHRT officers deployed on a daily basis. The tracking process allows the CPD to take a look at MHRT staffing levels by shift, district, and department-wide. According to the April, May, and June staffing reports, the CPD was able to provide consistent MHRT service. The MHRT staffing reports are included in Appendix Item 1.

MHRT Officer Dispatch Summary

Effective May 1, 2003, the Police Communications Section began to record the dispatch disposition of MHRT officers to all calls involving suspected mentally ill individuals. When dispatching these calls, the dispatcher makes an entry into a designated field for all MHRT calls, indicating one of the following dispositions:

- MHD - A MHRT unit was dispatched to the call.
- MHNA - A MHRT unit was not dispatched because all MHRT units city-wide were busy.
- MHNW - There were no MHRT units working in the city.

During this reporting period, the CPD documented (via the Computer Aided Dispatch report) 1,778 calls involving mentally ill persons. In 123 of those instances, the call did not meet the criteria for dispatch and was cancelled, or the call was handled by another agency. In 264 cases, the call was dispatched as another incident type and later changed to a MHRT by the responding officers. This equates to 1,391 calls eligible for MHRT officer dispatch. For 1,255 of the calls (90%), a MHRT officer was dispatched. For this reporting period, there were only 10 calls for which a MHRT officer was working but not available for dispatch, and there was one instance where a MHRT officer was not working. A monthly analysis of these calls is included in Appendix Item 2.

Mobile Crisis Team Workers

The Psychiatric Emergency Services Department of University Hospital continues its partnership with the CPD. This partnership has enabled Mobile Crisis Team personnel to work within police districts in conjunction with police personnel. Currently, the program operates in Districts One and Five.

For the third quarter of 2005, statistics were maintained for individuals in both districts who could be identified as being in need of mental health services. Identification is made through an incident history, police reports (Form 316), or by hospital records. Information regarding the number of MHRT runs handled by police, the Mobile Crisis Team, or a combination of both is also tabulated. Once an individual has been identified, social demographic data regarding the subject and the outcome of each incident is documented and entered into a database in each of the districts.

2005 Third Quarter	District One	District Five
Total runs	339	242
CPD only	178	144
Mobile Crisis Team only	56	27
CPD assisted by the Mobile Crisis Team	85	58
Mobile Crisis Team assisted by CPD	20	13
Total individuals identified	223	197
Mobile Crisis Team consultations	2	1

B. Foot Pursuits

The provisions of the MOA related to foot pursuits are located in paragraph 11.

Monitor's Previous Assessment

The Monitor reviewed 29 use of force investigations in which a foot pursuit was involved. The investigating supervisor documented a review of the foot pursuit on the Use of Force report in every investigation.

The CPD's policy, training, and actual practice on foot pursuits is in compliance with this MOA paragraph.

Status Update

The tactical and risk considerations involving foot pursuits were reiterated this quarter during roll call training. The related roll call training calendars are included in Appendix Item 25.

III. USE OF FORCE POLICY

A. General Use of Force Policies

The MOA's requirements pertaining to use of force are located in paragraphs 12 and 13.

Monitor's Previous Assessment

The Monitor has previously determined that the CPD's Use of Force policy and training are in compliance with the MOA provisions. During the last quarter, the Monitor reviewed the CPD use of force investigations to assess whether officers are implementing the CPD's use of force policies in compliance with the MOA.

In the 36 TASER incidents that the Monitor reviewed, the documentation and investigation indicated that in all but one of the incidents, the officer's use of force was reasonably related to the level of resistance and actions of the suspect.

The Monitor also reviewed 31 "other" use of force incidents. The Monitor cited only one case where he could not conclude that the force used was reasonably related to the actions and level of resistance of the subject.

The Monitor found the City in compliance with paragraphs 12 and 13.

Status Update

The CPD's Procedure 12.545, Use of Force, was revised during the third quarter. The following changes have occurred:

- The definition of "serious use of force" was revised to include an exception for individuals who are not suffering a serious injury but are admitted to a hospital for psychiatric evaluation only.
- "Serious Injury/Serious Physical Harm to Persons" was defined.
- The use of the X26 TASER was added to the use of chemical irritant section. Supervisors are now exempt from requiring neutral officers to transport the subject of a TASER deployment (in conformance with transport of a subject of a chemical irritant deployment).
- Section F.5., outlining the procedure for notifications when an arrestee is seriously injured, now includes an exemption from notification when the arrested is admitted to a hospital for psychiatric evaluation only. Additional requirements were added to notify the affected bureau commander and Duty Officer when an arrestee is admitted to a hospital for observation purposes only, or if an arrestee has ingested contraband resulting in seizures, convulsions, loss of consciousness, or other serious medical conditions. The affected bureau commander/Duty Officer will make the determination whether to notify the Criminal Investigation Section and the Internal Investigations Section.

Additionally, near the end of third quarter, the CPD and the DOJ agreed on

documentation and investigation requirements for TASER incidents. As a result, Procedure 12.545 was revised and implemented on October 18, 2005 to reflect this agreement. These changes, which will affect fourth quarter reporting, include the following:

- In the narrative portion of the Form 18, a statement will be required indicating the subject of the use of force was interviewed as part of the investigation and the identity of the supervisor who interviewed the subject.
- Supervisors will be required to tape record the interview of a subject of a use of force who makes an excessive force allegation.
- Supervisors will be required to tape record interviews in TASER investigations where the subject of the use of force was handcuffed at the time of the deployment.

TASERS

There were 166 TASER deployments in the third quarter of 2005. Full TASER implementation began in the second quarter of 2004. A breakdown of TASER usage by quarter is as follows:

Second quarter 2004	177
Third quarter 2004	198
Fourth quarter 2004	148
First quarter 2005	137
Second quarter 2005	143
Third quarter 2005	166

Although TASER usage has increased over the last quarter, it is important to note that deployments are considerably less when compared to the same quarter in 2004. In fact, when the high activity months in 2004 (April thru September)² are compared with the same months in 2005, **TASER usage is down 18%**.

During this quarter, there were 21 injuries associated with the 166 deployments. The injuries – mostly minor lacerations and abrasions -- occurred as a result of the subject falling to the ground after deployment.³ Most of the injuries were treated at the scene by a fire company.

Since the CPD began deployment of the X26 TASER, there have been 1,041 deployments to date. None of these 1,041 individuals were admitted to a hospital for a TASER related injury.

² The second and third quarters are traditionally the busiest periods in terms of radio runs, criminal activity, arrests, etc.

³ Injuries from TASER deployments are summarized in Appendix Item 3. During the third quarter, 49% of TASER deployments occurred during a foot pursuit. An itemized report supporting that figure is included in Appendix Item 4.

The number of **use of force** incidents has **declined 15%** in the past 12 months (see the table below).

Use of Force Table

	4 th Q 2003	1 st Q 2004	2 nd Q 2004	3 rd Q 2004	4 th Q 2004	1 st Q 2005	2 nd Q 2005	3 rd Q 2005
Chemical irritant - Unrestrained subjects	90	76	30	10	8	8	12	5
Restrained Subjects	15	10	9	10	9	11	10	3
Physical Force	29	17	4	2	1	4	4	3
Takedowns with Injury	12	11	4	8	6	10	3	2
Non-compliant suspects	48	40	41	30	31	23	18	29
PR 24	4	0	0	1	0	0	0	0
Canine	2	4	1	3	5	6	7	5
TASER	0	72	177	198	148	137	143	166
Beanbag/Foam round	0	1	0	0	0	0	0	2
Pepperball	2	0	0	0	1	0	0	0
Firearms Discharge	1	3	2	0	0	1	2	0
Total	203	234	268	262	209	200	199	215

The highlighted rows in this table reflect a **46% reduction** over the previous 12 months in instances where officers had to **engage non-compliant subjects**.⁴ The TASER has reduced the need for officers to have physical, often violent, encounters with resistive subjects.

In the third quarter, there were 16 TASER incidents where subjects possessed deadly weapons.⁵ Clearly, the use of the non-lethal TASER continues to be a valuable tool for CPD officers.

During the period October 1, 2004 to September 30, 2005, CPD officers had to use force in only 2.15% of arrest situations, as compared to 2.56% in the previous 12 months.⁶

⁴ This would include any instance where an officer had to resort to hands-on contact with a suspect/prisoner (physical force, takedowns with injury, and non-compliant/hard hands).

⁵ 2005-69217, 69379, 70649, 70687, 70781, 70802, 70955, 71386, 71462, 71600, 71798, 71806, 72238, 72284, 72402, 73223

⁶ 38,243 arrests during the period 10/01/04 to 9/30/05; 37,840 arrests during the period 10/01/03 to 09/30/04

The table below highlights a **19% decrease in injuries to suspects/prisoners** over the last 12 months:

Suspect/Prisoner Injuries Resulting from Police Contact⁷

	10/01/03– 09/30/04	10/01/04 – 09/30/05
Hard hands with injury and foot pursuits	136	99
Beanbags	0	2
Pepperball	2	0
40 mm foam	1	0
TASER	59	77
Other force⁸	34	10
Total	232	188

Additionally, **injuries to officers resulting from arrests and assaults dropped 51%** over the last 12 months (51 between 10/03 and 09/04, and 25 between 10/04 and 09/05).

C. Chemical Spray

The MOA provisions pertaining to chemical spray are found in paragraphs 14-19.

Monitor's Previous Assessment

The Monitor Team reviewed 15 chemical spray incidents from the first and second quarters of 2005 and determined that the CPD was in compliance with the MOA.

Status Update

There were eight deployments of chemical irritant in the third quarter -- down considerably from the 22 deployments last quarter. As can be seen in the use of force table, **chemical irritant usage has dropped 74%** in the past 12 months.

Seven of the eight reports this quarter document a warning of impending force. The other report (2005-69012) explains the exigent circumstances which prevented the warning.

Three of the deployments involved restrained prisoners (2005-69012, 2005-70560, and 2005-72393).

Decontamination of sprayed individuals occurred in all but one of the deployments. That incident (2005-71199) involved approximately 20 individuals involved in a bar

⁷ Does not include ingestions of contraband, injuries sustained to prisoners as a result of a vehicle crash from a pursuit, injuries from canine bites, etc. (any injury where the TASER would not have been a force option in an incident is not included). In regards to contraband, suspects normally swallow contraband before the officer comes in contact with them.

⁸ Includes strikes, kicks, PR 24, firearms

fight. The participants fled the scene after chemical irritant was dispersed.

This quarter's deployments have been summarized in Appendix Items 5, 6, 7, 8, and 9.

D. Canines

The MOA provisions relating to canine policy are located in paragraph 20.

Monitor's Previous Assessment

The CPD's canine policy, deployment of canines, and review of investigations are in compliance with the MOA.

Status Update

Canines were deployed in connection with 181 incidents during the third quarter. As a result, 35 individuals were located with 5 of those suspects being bitten by a dog. This equates to a 14% unit bite ratio.

The canine bite ratio reports generated pursuant to MOA paragraph 20 are included in Appendix Items 10, 11, and 12. These reports examine the following six-month periods:

February 1, 2005 – July 31, 2005 (bite ratio 19%)
March 1, 2005 – August 31, 2005 (bite ratio 20%)
April 1, 2005 – September 30, 2005 (bite ratio 19%)

The canine statistics generated by the ETS database have been included in Appendix Items 13, 14, and 15.

E. Beanbag Shotguns / 40mm Foam Rounds / Pepperball

The MOA provisions relating to beanbag shotguns and 40mm foam rounds are located in paragraphs 21, 22, and 23.

Monitor's Previous Assessment

There were no beanbag shotgun or 40 millimeter foam round deployments in the second quarter of 2005. The CPD is in compliance with the MOA requirements relating to beanbag shotgun deployment.

Status Update

During the third quarter of 2005, there were two incidents involving the deployment of the beanbag shotgun. The last time the beanbag shotgun was utilized was the first quarter of 2004.

On July 5, 2005, a male subject committed a homicide just prior to holding his estranged girlfriend hostage on the second floor of her home. SWAT was in a standoff with the subject, who was holding the female at knife-point. As the subject began to stab the female, a SWAT officer deployed his beanbag shotgun. That action, coupled with physical force and a TASER deployment, resulted in the hostage being rescued and the subject being apprehended (2005-69217).

On July 27, 2005, a subject fled on foot from a vehicle CPD officers were pursuing. During the foot pursuit, one of the subject's shoes got caught on a fence he was climbing, causing him to be suspended from the top of the fence. The subject would not show his hands after repeated commands from an officer to do so. After warning the subject of impending force, the officer deployed her TASER. Immediately after the deployment, the subject produced a firearm and fired one shot. The officer immediately disengaged. A sergeant then ordered the subject to drop the firearm and warned of impending force. When the subject refused to comply, the sergeant fired three rounds from his beanbag shotgun, striking the subject's torso. The subject fired another shot. The sergeant fired one additional beanbag round, which resulted in the subject dropping the firearm. The subject was apprehended without further incident.

IV. INCIDENT DOCUMENTATION, INVESTIGATION & REVIEW

A. Documentation

The MOA provisions relating to documentation are located in paragraphs 24 and 25.

Monitor's Previous Assessment

Form 18NC – Non-Compliant Suspect Arrestee Report

The Monitor reviewed 18 Non-Compliant Suspect/ Arrest Report Forms from the previous quarter and concluded that the CPD is in compliance with the requirements applicable to these incidents.

Takedowns with Injury

The Monitor reviewed seven Injury to Prisoner Reports from takedowns from the first and second quarter of 2005 and concluded that the CPD is in compliance with the MOA requirements for these incidents.

TASERS

The CPD and the Department of Justice have resolved the issue of what level of documentation and investigation is required for TASER incidents. The agreement was reached late in the third quarter. The Monitor will assess whether the CPD is in compliance with these requirements in the fourth quarter.

Status Update

Form 18NC – Non-Compliant Suspect Arrestee Report

There were 29 incidents of hard hands without injury during the third quarter.

Takedowns with Injury

There were two takedowns with injury during the third quarter.

TASERS

There were 166 TASER incidents in the third quarter. Additionally, near the end of third quarter, the CPD and the DOJ agreed on documentation and investigation requirements for TASER incidents. As a result, Procedure 12.545 was revised and implemented on October 18, 2005 to reflect this agreement.

B. Investigation

The MOA provisions relating to investigation are located in paragraphs 26-31.

Monitor's Previous Assessment

Policy

The CPD's policies on investigating Use of Force incidents comply with the MOA.

Review of Force Investigations

During this quarter, the Monitor Team reviewed 67 investigative files involving use of force incidents (including TASER deployments, canine bites, hard hand and takedowns, and chemical sprays). The Monitor Team reached the following conclusions from those investigations:

- In all of the use of force incidents, the officer notified a supervisor, and the supervisor responded to the scene (MOA ¶26).
- There were no incidents where the use of force was investigated by a supervisor who used force or authorized the use of force, or whose conduct led to the reportable incident (MOA ¶26).
- In all of the incidents but one, the supervisor investigated, evaluated and documented the incident giving rise to the use of force, and the documentation included facts and circumstances that either justified or failed to justify the officer's conduct [Tracking No. 61010.1] (MOA ¶27).
- In all of the incidents except two, the supervisor reviewed the basis for the initial stop and seizure and determined whether the officer's actions were within CPD policy [Tracking Nos. 60605.1, 65327.1](MOA ¶27).
- In all of the incidents, all officers involved in or at the scene of the use of force were identified on the Use of Force Report and provided a statement, with the possible exception of Tracking No. 68063.1 (MOA ¶30).
- All of the use of force investigations were reviewed by a lieutenant or higher. In a number of incidents, the lieutenant or captain reviewing the investigation determined that the investigation was not sufficiently thorough and directed that any deficiencies be corrected (Tracking Nos. 68411.1, 62349.1, 62347.1). There were other investigations, however, where the supervisor failed to conduct a thorough investigation or make an appropriate determination, but the shortcomings were not identified by the chain of command

[Tracking Nos. 60605.1, 63957.1, 61010.1, 67740.1, 65327.1, 68063.1] (MOA ¶31).

Status Update

Policy

As previously stated, Procedure 12.545 was revised in the fourth quarter to reflect the agreement with the DOJ regarding TASER reporting requirements.

Review of Force Investigations

With respect to Paragraph 27, the Monitor Team cited two report numbers (2005-60605.1, dated January 11, 2005; the other 2005-65327.1, dated April 18, 2005) in which the supervisor failed to review the basis for the initial stop and seizure and determine whether the officer's actions were within CPD policy.

The Police Relations Section reviewed these two reports and found that both reports submitted to the Monitor for review included an analysis of the initial contact by the reviewing supervisor, and both assessed whether the officers' actions were within CPD policy. Copies of the reports are included in Appendix Item 16.

The Monitor Team also cites report 2005-60605.1 when assessing the requirements of Paragraph 29. Although they find the CPD in compliance with this paragraph, this report is one of three in which they state they "could not conclude from the documentation that all relevant witnesses were identified and interviewed, all relevant evidence was considered, material inconsistencies between witnesses were not explored, and areas of relevant inquiry and follow-up questions were addressed." In reviewing the narrative of this report, the CPD questions what other information could have been included. Since the Monitor Team does not give specifics, the CPD can only assume that the Monitor Team questioned whether the investigating supervisor went back and attempted to interview the group of people standing on the corner.⁹

From a practical standpoint, rarely are individuals going to remain on the same corner and wait for the police return, especially if they were involved in drug activity. More importantly, the individuals would not have been witnesses to the use of force since the TASER deployments occurred some distance away (on a different street).

The Monitor Team's "partial compliance" assessment of Paragraph 31 cited the aforementioned reports as two of six reports which they based their determination on. The CPD has reviewed the other four reports and questions the ambiguous comments made by the Monitor Team. We ask, as we have in

⁹ An officer observes a group of individuals standing on a corner, possibly involved in a drug transaction. The officer notices one subject make eye contact with the officer, rapidly walk away, and place an unknown item in the wheel well of a grey truck parked on the street. As the officer approaches, the subject flees on foot.

previous reports, for the Monitor Team to be more specific in their comments as to the perceived deficiencies.

The Monitor makes both a quantitative and qualitative assessment of the CPD's compliance with Paragraph 31. A quantitative assessment is made in regards to investigations being reviewed by a lieutenant or higher. One hundred percent (100%) of the sixty-seven (67) files were reviewed by a lieutenant or higher. The other provisions of Paragraph 31 have a qualitative assessment. The Monitor only found issues with six (6) of the sixty-seven (67) files relating to this paragraph (even though the CPD has refuted at least two of those cases). If this paragraph was based totally on the less forgiving quantitative basis, this would equate to 91% of the cases being compliant. The CPD would argue that the more liberal qualitative measure has been met.

C. Review of Critical Firearms Discharges

The relevant provisions of the MOA are located in paragraphs 32, 33, and 34.

Monitor's Previous Assessment

The CPD's policy on critical firearms discharges and the Firearms Discharge Board complies with the MOA.

Last quarter, the Monitor Team reviewed FDB Reports from incidents in 2004, along with the CIS and IIS investigations of those cases. The investigations and FDB reports from the incidents in 2005 have not been completed, so the Monitor was unable to make a determination of compliance.

Status Update

There were no incidents of firearm discharges at suspects in the third quarter of 2005. There have been three firearm discharge investigations in 2005. Their status is as follows:

Police Investigation Number	Status
05-pi-01	FDB report was approved by Chief Streicher on September 1, 2005
05-pi-02	FDB report was approved by Chief Streicher on October 17, 2005
05-pi-04	FDB report was approved by Chief Streicher on October 17, 2005

A member of the Monitor Team attended the FDB meeting on October 11, 2005, regarding case 05-PI-04.

Copies of the FDB reports are included in Appendix Item 17.

V. CITIZEN COMPLAINT PROCESS

A. Openness of the Complaint Process

Paragraphs 35, 36, 37, and 38 of the MOA deal with the openness of the complaint process.

Monitor's Previous Assessment

The City is in compliance with the MOA requirement that complaint forms and informational material be made available in public buildings such as City Hall, the library and CPD District buildings, and that officers carry forms and materials in their vehicles at all times while on duty.

In the second quarter, the Monitor reviewed 15 citizen complaint files from the first and second quarters of 2005, to determine compliance with the MOA provision prohibiting officers from discouraging any person from making a complaint, and that complaints can be filed in any form, including in writing or verbally, in person or by mail, telephone, fax or e-mail. The Monitor has identified two of the 15 cases in which an officer or supervisor did not inform the citizen of his or her right to make a complaint, but rather discouraged the complainant from making the complaint. [Tracking Nos. 05036, 05043].

In addition, based on the cases that were referred to the CPD from the CCA, but were not opened as investigations, the Monitor finds that the CPD is not in compliance with the requirements that a complaint form will be completed for each complaint, that each complaint be assigned a unique identifier, and that each complaint be resolved in writing.

Therefore, the CPD is not in compliance with MOA ¶¶36 and 37.

The City has now put in place new protocols to compare the cases that the CCA has in its files with the cases that the CPD has in its files, to ensure that every complaint is opened and investigated appropriately. The Monitor will evaluate compliance with these new procedures in the next quarter.

Status Update

The CPD disagrees with the Monitor's determination that CPD personnel discouraged subjects from filing complaints in the two cases they cited.

In case 05036, a female complainant told a police supervisor that an officer inappropriately touched her. The supervisor, who was on scene at the time of the alleged incident, advised the complainant he observed the event and it did not occur as she alleged. When she insisted it did, the supervisor initiated a complaint on her behalf and notified IIS. IIS interviewed the complainant an hour later, resulting in the complainant recanting her allegation.

The CPD would argue that the supervisor did not discourage the subject from making a complaint. He merely advised the complainant that he witnessed the event and that it did not occur as she stated. He initiated the paperwork and notified IIS, even though he knew the complaint lacked merit.

In case 05043, a complainant alleged that he was racially profiled. After speaking with a supervisor, he stated he did not wish to initiate a complaint. The supervisor did not discourage the subject from filing a complaint. A month later, he notified the CPD that he wanted to proceed with a complaint on the same matter. The CPD filed a complaint on his behalf.

In regards to cases that were referred to the CPD from the CCA, but were not opened as investigations, IIS has opened these cases and have completed their investigations in all but three cases.

B. Investigation of Complaints

Paragraphs 39-50 of the MOA deal with the investigation of complaints.

Monitor's Previous Assessment

Time Period of Investigations

The Monitor has determined that the CPD is in not in compliance with the requirement that investigations be completed within 90 days of receiving the allegations.

Review of Investigations

The Monitor reviewed 15 IIS investigations and eight CCRP investigations in the second quarter. Of these, ten investigations were complete and thorough and in compliance with the MOA requirements. However, the Monitor has determined that the CPD is not in full compliance with some of the MOA provisions.

- Three complaints involved investigations where the on-scene investigation was conducted by a CPD member who authorized or was involved in the conduct that was the basis of the complaint. [Tracking Nos. 04129; 05036; 62675.1]. (MOA ¶40)
- Improper leading questions were not used in the investigations, with the exception of Tracking No. 05043. (MOA ¶41)
- The Monitor Team found that in many of the cases, the CPD considered all relevant evidence, including circumstantial, direct and physical evidence, as appropriate. Complaint investigations where not all of the relevant evidence was considered, or where relevant witnesses were not identified and interviewed, included Tracking

Nos. 04080, 04129, 05006, 62159.1, 62675.1, 62972.1, 65176.1, and 67312.1. (MOA ¶¶41, 49(f))

- Complaint investigations where sufficient efforts were not made to resolve material inconsistencies between evidence and witness statements, or where relevant areas of inquiry and follow up questions were not addressed, included Tracking Nos. 04080, 04129, 62972.1. (MOA ¶¶41, 49(g))
- The investigating supervisor reviewed the initial stop and search and seizure in all cases. (MOA ¶41)
- Not all complaint investigations reviewed and resolved all relevant police activity, including conduct not included in the initial complaint [Tracking No. 05043]. (MOA ¶42)
- Not all IIS complaint investigations included taped interviews of complainants, involved officers and witnesses [Tracking No. 05035]. This complaint stemmed from the deployment of a TASER in which the field supervisor did not take taped statements, and IIS did not follow up to conduct taped interviews. (MOA ¶49(a))
- In most of the cases reviewed by the Monitor Team, the investigator prepared a report that included a description of the alleged misconduct, any other misconduct identified during the course of the investigation, a summary and analysis of all relevant evidence gathered, and proposed findings and analysis supporting the findings. The report was not complete, however, in Tracking Nos. 04080, 04129, 05043. (MOA ¶50)
- Seven of the eight CCRP complaints were appropriately assigned as CCRP cases, as they did not involve allegations of use of force, pointing of firearms, searches or seizures, or discrimination. One complaint alleged a use of force (though a low level one) that should have been investigated by IIS, even though the investigation later determined that the officer escorted the complainant and did not use force [Tracking No. 62319]. (MOA ¶46)
- The CCRP complaints were investigated and adjudicated prior to a complaint resolution meeting. (MOA ¶47)

The Monitor finds that the CPD has complied with MOA ¶¶42, 43, 46 and 47. The City is not in compliance with the requirement that investigations be completed within 90 days of the filing of the complaint (MOA ¶50). The CPD is in partial compliance with MOA ¶¶40, 41, 49 and 50.

Status Update

Time Period of Investigations

Investigators continue to include an approved memorandum in the file jacket explaining any exigent circumstances which prevented the case from being completed within 90 days.

IIS Investigations

Review of the data of IIS cases closed during the third quarter of 2005 revealed a total of 78 cases cleared during this timeframe. Of those 78 cases, 35 exceeded the 90-day investigative requirement.

A summary of closed IIS cases during this quarter is included in Appendix Item 18.

CCRP Investigations

Review of the data of CCRP cases closed during the third quarter of 2005 revealed a total of 48 cases were cleared during this timeframe. Of those 48 cases, 8 exceeded the 90-day investigative requirement.

A summary of closed CCRP cases during this quarter is included in Appendix Item 19.

Review of Investigations

In regards to the Monitor's first bulleted issue, the CPD disagrees with two of the three investigations cited as cases where the on-scene investigation was conducted by a CPD member who authorized or was involved in the conduct that was the basis of the complaint.

Paragraph 40 states, "The CPD will explicitly prohibit from investigating an incident any officer who used force or chemical spray during the incident, whose conduct led to the injury to a prisoner, or who authorized the conduct that led to these reportable incidents."

The previously mentioned IIS case 05036 (see Openness of the Complaint Process) does not involve a use of force incident. A complainant alleged sexual misconduct by an officer. The supervisor, who was on scene at the time of the alleged incident, took the complaint, and contacted IIS, even though he knew the complaint lacked merit.

CCRP case 2005-62675 involves an allegation from a juvenile that the officers who transported him to jail drove recklessly, causing him to strike his head on the Plexiglas partition. The supervisor who investigated the complaint was on scene at the time of the arrest, however, the provisions of paragraph 40 would not have prevented him from investigating the complaint, i.e. the preliminary investigation conducted by the supervisor did not result in an Injury to Prisoner

report being made on behalf of the complainant. Even if it did, the supervisor did not use force, his conduct did not lead to an alleged injury, and he did not authorize the conduct (reckless driving) which led to the alleged injury.

Additionally, in regards to other cases where the Monitor noted that all of the relevant evidence was not considered, relevant witnesses were not identified and interviewed, or material inconsistencies were not resolved, the CPD asks that future reports contain case specific information, e.g. “Case 4080 did not include an interview of John Smith, who was listed on the complaint as being a witness.” The CPD has made a similar request of the Monitor’s review of use of force investigations.

C. Adjudication of Complaints

Paragraphs 44 and 45 of the MOA deal with the adjudication of complaints.

Monitor’s Previous Assessment

The City is in compliance with the requirement that every complaint be closed with one of four dispositions: Sustained, Not Sustained, Unfounded or Exonerated. (“Sustained-Other” is a sustained disposition for a violation that was not initially alleged in the complaint, but that was identified by the CPD.)

Status Update

IIS Cases

During the third quarter of 2005, 78 cases involving 120 allegations were investigated and closed by IIS. Those cases were closed as follows:

Sustained	39
Sustained Other	6
Exonerated	24
Not Sustained	27
Unfounded	24

CCRP Cases

During the third quarter of 2005, 48 cases involving 51 allegations were investigated and closed through the CCRP process. Those cases were closed as follows:

Sustained	9
Sustained Other	1
Exonerated	5
Not Sustained	20
Unfounded	16

Additionally, this quarter the CPD received and processed 50 reports of favorable officer conduct reported on positive contact forms. Also, there were 168 letters of commendation received recognizing the outstanding performance of CPD officers. A copy of the quarterly report relating to the aforementioned information is included in Appendix Item 20.

D. Investigations by the CCA

Paragraphs 51-56 of the MOA deal with investigation by the CCA.

Monitor's Previous Assessment

Operations and Procedures

The City has now developed a formal written protocol for coordinating parallel CCA and IIS investigations and ensuring a timely flow of information between the agencies. While the City was not in compliance with MOA ¶¶52 and 54 in the second quarter of 2005, the Monitor believes that these new procedures will address these concerns. The Monitor will assess compliance with these requirements in the next quarter.

With respect to MOA ¶55, requiring that the City take appropriate action, including discipline where warranted, on completed CCA investigations, the Monitor cannot find the City in compliance for the second quarter of 2005. There are still cases where the CPD has not completed its investigation of allegations on which the CCA sustained violations, so that these cases have not yet gone to the City Manager for a final decision.

Sample Investigations

The Monitor Team will be reviewing CCA investigations in the next quarter for compliance with the MOA requirements.

Status Update

Operations and Procedures

The CPD is confident that past deficiencies have been corrected. A copy of the CPD/CCA case management spreadsheet is included in Appendix Item 21.

Sample Investigations

Nothing to report

VI. Management and Supervision

A. Risk Management and Supervision

Paragraphs 57-66 of the MOA are relevant to risk management and supervision.

Monitor's Previous Assessment

Protocol and Data Input Plan

The CPD is in compliance with the MOA requirements for the ETS protocol and data input plan. (MOA ¶60, 61)

Implementation of the ETS system

The Monitor will continue to assess the CPD's use of the ETS system and implementation of the requirements of the ETS protocol as the system becomes operational in the next quarter. However, at present, there are several aspects of the ETS protocol that are not yet able to be implemented. These include the ETS components for data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit. Therefore, the requirements prescribed in MOA¶ 62(a), (b), (c), (d), (e), (f), (i), (j), and (k) have not been met.

While CPD records are being entered into the ETS system (¶58), and the system is being used by the CPD for a variety of management purposes, the lack of the weighting and analysis component has meant that the CPD has not yet been able to use it for its main purpose under the MOA: identifying patterns of activity for each data category, and then initiating intervention for individual officers, supervisors, and units based on appropriate activity and pattern assessment of the data in the system. The CPD is not in compliance with MOA ¶62.

Manual Risk Management System

Because the CPD stopped using the manual risk management system and started inputting the information into the ETS system instead, the CPD is unable to properly assess and evaluate its members until the analysis functionality is working. For example, the CPD has not made any general effort to evaluate which officers are deploying TASERS to a greater degree than their peers, and reviewing whether that level of activity is appropriate. The CPD is not in compliance with MOA ¶65.

Status Update

Protocol and Data Input Plan

Nothing to report

Implementation of the ETS system

To date, there have been approximately 20,958 reports entered into the ETS system. This includes Vehicle Pursuits, Vehicle Crashes, Investigation Reports (Use of Force), Employee Injury, ESLs, Civil Suits, Canine Reports, Internal Investigation (closed) Reports, Citizen Complaints, and Court Appearances.

Motorola (formally CRISNET), the vendor, continues to work on the data conversion for all of the old data to be imported into the system. The CPD expects the data conversion to be completed early in the fourth quarter. Motorola also has to make less than a dozen corrections and modifications to the system. Once the data conversion has been loaded on the production server and the remaining items have been corrected, the Department will enter into a 60 day proof of performance period to evaluate the system as a whole.

The most notable progress made during the third quarter was the completion of the analysis tools. The analysis tools have been loaded onto the production server and are now available for supervisors to use. A refresher course was offered to supervisors regarding the use of the analysis tools. This course was made available to all three shifts to ensure the information was disseminated throughout the Department.

The Department is ready to perform its first test analysis in the fourth quarter using third quarter data.

Manual Risk Management System

With the advent of the analysis portion of the ETS system now in place, supervisors have begun using this component in reviewing each officer's activity. Intervention is mandated as a result of an officer exceeding established thresholds at various review intervals.

The first Quarterly Command Review Session is scheduled for January 2006.

B. Audit Procedures

Paragraphs 67-69 of the MOA deal with audit procedures.

Monitor's Previous Assessment

The Monitor reviewed the documentation of the Inspections Section's audits of the CCRP and the IIS process. The Inspections Section now uses a checklist to document its review of IIS and CCRP cases. Based on this documentation, the Monitor finds the CPD in compliance with MOA §§ 67, 68 and 69. They note, however, that the Inspections Section's audit of IIS cases was not a general audit of IIS's procedures and

operations. It evaluated the specific investigations reviewed, but did not, for example, address the concern about complaints that were made to the CCA and referred to IIS, but not investigated by IIS. Also, with respect to the CCRP audit, quite a few of the calls to complainants did not result in contacting the complainant. This may be because the complainants were not at home during the day when the calls were made. The Monitor recommends that Inspections attempt to call complainants at other times when they are not at home during the workday.

Status Update

The CPD has the following responses to issues raised by the Monitor regarding audits:

➤ **Concerns about IIS's failure to appropriately process complaints received from the CCA.**

The context is clearly defined in the MOA as to the scope of Inspections Section's audit of IIS. In paragraph 68, it states that Inspections will conduct a semi-annual audit on investigations conducted by IIS. The mandate specifically identifies the areas of assessment, specifically, (1) assess the reliability and completeness of IIS's canvassing and interviewing of witnesses, (2) preservation and analysis of the incident scene, and (3) the appropriateness of IIS's conclusions.

The issue of IIS failing to properly process CCA complaints is outside the mandates of paragraph 68. However, that issue was addressed administratively and processes were instituted to better insure future complaints received by IIS from the CCA are appropriately documented and investigated. These issues were beyond the scope of both the MOA and Inspections Section's authority.

➤ **Contacting CCRP complainants during evening hours to increase the number of contacts.**

In cases where complaints are not reached during business hours, Inspections Section personnel will (in the majority of cases) leave messages with family members or on answering machines for the complainant to contact us during the day. Some complainants choose to respond to these messages while others elect not to. Inspections Section has no control over the level of cooperation from complainants, even if they are reached by phone.

Inspections Section has conducted their review of the CCRP process for the third quarter of 2005. Ninety-three complaints were filed with the CPD between July and September. A random audit of 18 cases was conducted on the closed investigations.

Inspections Section reviewed the following criteria:

- Ensure CCRP complaints were entered into the database and the case files were maintained in a central area for each district, section, and unit.
- Ensure necessary documentation was completed for each CCRP investigation.

- Ensure all files contained the appropriate documents.
- Ensure the investigating supervisor notified the complainant of the disposition and whether any corrective or disciplinary action was taken.

Additionally, Inspections Section randomly contacted complainants to evaluate whether their actions and views were accurately captured in the CCRP reports.

The audit revealed that all CCRP investigations reviewed were in compliance with the criteria set forth above.

A summary of the audit was prepared on October 14, 2005, and is included in Appendix Item 22.

The semi-annual IIS audit will be reported on next quarter.

The CPD also had conversations with representatives from both the City and County Prosecutor's Offices to discuss individual and/or collective officer performance issues. Based upon comments received, and in an effort to achieve continuous process improvement, the Department is re-emphasizing the importance of proper case preparation. Officer preparedness for court testimony has also been stressed.

A copy of the memo relating to this issue is included in Appendix Item 23.

C. Video Cameras

MOA paragraphs 70-72 deal with video camera requirements.

Monitor's Previous Assessment

The Monitor, the CPD and the Department of Justice will discuss the requirements of the MOA's MVR provisions in the next quarter. Currently, not all vehicles have recorders installed. The Monitor will review in the next quarter whether the police cars without MVRs are being used for police activities that should be recorded under the MOA. In addition, in incidents involving cars equipped with MVRs, they will examine whether MVRs were used and the tapes reviewed as required by the MOA. The RAND Evaluation Protocol also includes a review of MVR tapes, and the Monitor will assess the information from that component of the Evaluation Protocol. For these reasons, the Monitor will defer a compliance determination until the next quarter.

The Monitor did note that manual activation of the MVR was used in two incidents in which an officer deployed chemical spray on a restrained individual being transported in the police car [Tracking Nos. 65239.1, 64415.1]. The MVR provided the investigating supervisor, the chain of command and the Monitor with information corroborating the officer's statement. Now that the CPD policy requires MVR activation for all prisoner transports, the investigating supervisor and chain of command will have MVR tapes to review in all incidents where force is used on persons being transported in the police car.

Status Update

All but 24 of the CPD's 236 marked units are equipped with a MVR/DVR. An additional 16 vehicles have nonfunctional MVR/DVRs. Funding for the purchase/replacement of these 40 camera systems has been identified. The CPD will purchase and install these systems near the end of the fourth quarter. Full outfitting of all marked beat cars is anticipated in the first quarter of 2006.

The CPD and the DOJ are currently discussing the requirements of the MOA's MVR provision.

D. Police Communications Technology

MOA paragraphs 73 and 74 relate to police communications technology.

Monitor's Previous Assessment

The Monitor found the CPD to be in compliance with these provisions.

Status Update

The CPD has selected Motorola as the primary vendor for the new Computer Aided Dispatch (CAD) and Records Management System (RMS). Contract negotiations are still under way. The CPD hopes to submit the contract for signatures in early November, with the kick-off date on or about December 1, 2005.

E. Discipline Matrix

MOA paragraphs 75-76 are relevant to discipline and promotional policy.

Monitor's Previous Assessment

The CPD has not had the capabilities to track electronically the disciplinary penalties imposed in each case where a violation of policy has been sustained. Although the ETS system is now being implemented, the data on disciplinary action is not yet available.

The Monitor raised the concern in prior Reports regarding those cases where the CCA sustained an allegation that was determined by the CPD to be not sustained, exonerated or unfounded. The City's Status Report states that "the CCA is currently 'marrying up' the CPD's 2004 database with their database. The result will be a spreadsheet identifying cases with conflicting findings. The City Manager will then address those cases." Because the City has not yet addressed and resolved these issues, Cincinnati is not yet in compliance with these MOA provisions.

Status Update

The Deputy Monitor met with ITMU personnel during a site visit in October. Pursuant to the meeting, he stated he is satisfied that ETS is maintaining all of the requisite data.

In regards to the CPD/CCA case management issue, as stated in the CCA portion of this report, the CPD is confident that deficiencies have been rectified. A copy of the CPD/CCA case management spreadsheet is included in Appendix Item 21.

VII. TRAINING

A. Use of Force – Management Oversight and Curriculum

MOA paragraphs 77 – 81 are relevant to management oversight of training and training curriculum.

Monitor's Previous Assessment

The CPD remains in compliance with these provisions.

Status Update

During this quarter, Use of Force was covered multiple times in the Roll Call Training Program.

Annual Firearms Qualifications began in July and continues through December. Target Range personnel review the Use of Force procedure (12.545) and Discharging of Firearms by Police Personnel procedure (12.550) at the beginning of every qualifications session.

The Police Academy conducted another needs assessment for training. Various training items were discussed at the Training Committee meeting held on August 25, 2005. A summary of the meeting is included in Appendix Item 24.

B. Handling Citizen Complaints

MOA paragraph 82 is relevant to citizen complaint training.

Monitor's Previous Assessment

The CPD is in compliance with this section of the MOA.

Status Update

Nothing to report

C. Leadership/Command Accountability Training

MOA paragraph 83 is relevant to leadership/command accountability training.

Monitor's Previous Assessment

The Monitor found the CPD to be in compliance with this MOA provision.

Status Update

Lieutenant James Gramke is currently attending the Southern Police Institute in Louisville, Kentucky.

D. Canine Training

MOA paragraph 84 is relevant to canine training.

Monitor's Previous Assessment

The Monitor states they will observe and review canine training in the next quarter.

Status Update

Nothing to report

E. Scenario Based Training

MOA paragraph 85 is relevant to scenario-based training.

Monitor's Previous Assessment

The CPD remains in compliance with this provision.

Status Update

During the third quarter of 2005, the CPD provided 1,972 hours of Roll Call Training. Several new scenarios taken from CPD incidents were added to the library. Other areas reviewed include:

- Racial Profiling Scenario
- Problem Solving Case Study
- Use of Force
- MHRT Response

The Roll Call Training calendars and summary for this quarter have been included in Appendix Items 25 and 26.

Also of note, 55 officers attended Advanced Tactical Skills training sponsored by the Police Academy. Training took place during five, eight hour days at the Academy.

Areas of training included:

- Verbal judo and communication skills
- Use of force policy, procedure, and reporting
- Case preparation

- Handcuffing techniques
- Critiques of use of force incidents

Classes were conducted by members of the Academy staff, Inspections Section, and CIS. A member of the Monitor Team attended one of the sessions.

A copy of the lesson plan related to the training is included in Appendix Item 27.

F. Revised Training Based on Review of Civil Lawsuits Pertaining to Officer Misconduct

MOA paragraph 86 is relevant to training based on civil lawsuits.

Monitor's Previous Assessment

The CPD is in compliance with this provision.

Status Update

The quarterly meeting between the City Solicitor's office and the CPD took place on August 25, 2005. The following items were discussed:

- Updates were given on five court cases involving the CPD.
- Information regarding the reorganization of the Law Department was discussed.

The minutes from the meeting have been included in Appendix Item 28.

G. Orientation to the MOA

MOA paragraph 87 is relevant to MOA orientation training.

Monitor's Previous Assessment

The City remains in compliance with this provision.

Status Update

Management in-service training is scheduled to begin in the fourth quarter. One block of instruction is related to the CCA. Mr. Wendell France, Executive Director of the CCA, and Mr. S.G. Baker, Executive Manager of Police Relations for the CPD, will provide an overview of civilian review, the role of the CCA, and the CCA process.

H. Field Training Officers

MOA Paragraphs 88-89 deal with the training of field training officers.

Monitor's Previous Assessment

The City remains in compliance with this provision.

Status Update

On September 23, 2005, members of the FTO Board met and discussed recruiting and retention incentives for FTO candidates. They also discussed possibly revising the Daily Observation Report which FTOs use to evaluate probationary police officers.

The minutes from the meeting have been included in Appendix Item 29.

Additionally, Sergeant Bret Isaac, FTO Coordinator, is registered to attend a FTO Management course in Jacksonville, Florida during the third week in October.

Firearms Training

MOA paragraphs 90-91 are relevant to firearms training.

Monitor's Previous Assessment

The CPD remains in compliance with these MOA provisions.

Status Update

During the third quarter, 686 officers attended firearms qualifications.

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